

Senator J. Stuart Adams proposes the following substitute bill:

STORAGE UNIT AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the enforcement procedures that apply to liens described in Title 38, Chapter 8, Self-Service Storage Facilities, against property stored in self-service storage facilities.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows an owner of a self-service storage facility to send notices related to the enforcement of a lien described in Title 38, Chapter 8, Self-Service Storage Facilities, by email;
- ▶ provides that an owner may advertise a sale of personal property to enforce its lien in any commercially reasonable manner;
- ▶ allows an owner to have a vehicle towed from the self-storage facility if the occupant has been in default for a continuous 60-day period; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **38-8-1**, as last amended by Laws of Utah 2009, Chapter 356

30 **38-8-2**, as last amended by Laws of Utah 2000, Chapter 252

31 **38-8-3**, as last amended by Laws of Utah 2011, Chapter 102

32 **38-8-4**, as enacted by Laws of Utah 1981, Chapter 171

33 ENACTS:

34 **38-8-3.5**, Utah Code Annotated 1953



36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **38-8-1** is amended to read:

38 **38-8-1. Definitions.**

39 As used in this chapter:

40 (1) "Certified mail" means:

41 (a) a method of mailing that is offered by the United States Postal Service and provides
42 evidence of mailing; or

43 (b) a method of mailing that is accompanied by a certificate of mailing executed by the
44 individual who caused the notice to be mailed.

45 ~~[(+)]~~ (2) "Default" means the failure to perform in a timely manner any obligation or
46 duty [set forth] described in this chapter or the rental agreement.

47 (3) "Independent bidder" means a bidder that is not related to, and shares no pecuniary
48 interest with, the owner or any other bidder present at the auction.

49 (4) "Known lienholder" means a person that an owner knows has a lien or ownership
50 interest in the property that is subject to the owner's lien, including a person that has filed a
51 valid financing statement with the Division of Corporations and Commercial Code and a
52 person identified as a lienholder in the records of the Motor Vehicle Division.

53 ~~[(2)]~~ (5) "Last known address" means [that] the address provided by [the] an occupant
54 in the latest rental agreement or the address provided by [the] an occupant in a subsequent
55 written notice of a change of address.

56 ~~[(3)]~~ (6) "Occupant" means a person, or [his] the person's sublessee, successor, or

57 assignee, entitled to the use of ~~[the]~~ a storage space at a self-service storage facility under a
58 rental agreement, to the exclusion of others.

59 ~~[(4)]~~ (7) "Owner" means:

60 (a) the owner, operator, lessor, or sublessor of a self-service storage facility~~[-his]~~;

61 (b) an agent[-] of a person described in Subsection (7)(a); or

62 (c) any other person authorized by ~~[him]~~ a person described in Subsection (7)(a) to
63 manage the facility or to receive rent from an occupant under a rental agreement.

64 ~~[(5)]~~ (8) "Personal property" means movable property not affixed to land and includes~~[-~~
65 ~~but is not limited to;~~ goods, merchandise, and household items.

66 ~~[(6)]~~ (9) "Rental agreement" means any written agreement or lease ~~[which]~~ that
67 establishes or modifies the terms, conditions, rules, or any other provisions ~~[concerning]~~
68 relating to the use and occupancy of a unit or space at a self-service storage facility ~~[and which~~
69 ~~contains a notice stating that all articles stored under the terms of the agreement will be sold or~~
70 ~~otherwise disposed of if no payment has been received for a continuous 30-day period. The~~
71 ~~agreement shall contain a provision directing the occupant to disclose any lienholders with an~~
72 ~~interest in property that is or will be stored in the self-service storage facility].~~

73 ~~[(7)]~~ (10) (a) "Self-service storage facility" means ~~[any]~~ real property designed and
74 used for the purpose of renting or leasing individual storage space to occupants who ~~[are to]~~
75 have access to the facility for the purpose of storing ~~[and removing]~~ personal property. ~~[No~~
76 ~~occupant may use a self-service storage facility for residential purposes. The owner of a~~
77 ~~self-service]~~

78 (b) "Self-service storage facility" ~~[is]~~ does not include:

79 (i) a warehouse ~~[as used]~~ described in Section 70A-7a-102~~[- If an owner issues any]~~;

80 (ii) real property used for residential purposes; or

81 (iii) a facility that issues a warehouse receipt, bill of lading, or other document of title
82 for the personal property stored~~[- the owner and the occupant are subject to the provisions of~~
83 ~~the Uniform Commercial Code, and the provisions of this chapter do not apply]~~ at the facility.

84 (11) "Vehicle" means personal property required to be registered with the Motor
85 Vehicle Division pursuant to Title 41, Chapter 1a, Part 2, Registration, Title 41, Chapter 22,
86 Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act.

87 Section 2. Section ~~38-8-2~~ is amended to read:

88 **38-8-2. Lien against stored property -- Attachment and duration -- Search for**
89 **financing statement prerequisite to enforcement of lien.**

90 (1) ~~[Where]~~ When an owner and an occupant enter into a rental agreement, ~~[as defined~~
91 ~~in Subsection 38-8-1(6), is entered into between the owner and the occupant,]~~ the owner ~~[of the~~
92 ~~self-service storage facility]~~ and the owner's heirs, executors, administrators, successors, and
93 assigns have a lien upon all personal property located at the self-service storage facility for rent,
94 labor, or other charges, present or future, in relation to the personal property and for expenses
95 necessary for its preservation or expenses reasonably incurred in its sale ~~[or other disposition]~~
96 under this chapter.

97 (2) The lien described in Subsection (1) attaches ~~[as of]~~ on the date the personal
98 property is brought to the self-service storage facility and continues so long as the owner
99 retains possession and until any default is corrected~~[-]~~ or a sale pursuant to a default is
100 conducted~~[-, or the property is otherwise disposed of]~~ to satisfy the lien.

101 (3) A rental agreement shall state that:

102 (a) an owner is entitled to sell all personal property stored at the self-service storage
103 facility pursuant to the rental agreement if the occupant is in default for a continuous 30-day
104 period; and

105 (b) the occupant shall disclose to the owner any lienholders that have an interest in the
106 property that will be stored at the self-service storage facility.

107 (4) If a rental agreement states a maximum, aggregate value of the personal property
108 that may be stored at the occupant's storage space, the occupant may not assert that the value of
109 the personal property actually stored at the occupant's storage space exceeds the maximum
110 amount stated in the rental agreement.

111 ~~[(3)]~~ (5) (a) Before [taking] an owner takes enforcement action under Section 38-8-3,
112 the owner shall determine if a financing statement filed in accordance with Title 70A, Chapter
113 9a, Part 5, Filing, has been filed with the Division of Corporations and Commercial Code
114 concerning the property to be sold ~~[or otherwise disposed of]~~.

115 (b) A security interest evidenced by a financing statement filed in accordance with
116 Title 70A, Chapter 9a, Part 5, Filing, has priority over the lien provided by this section.

117 Section 3. Section **38-8-3** is amended to read:

118 **38-8-3. Enforcement of lien -- Notice requirements -- Sale procedure and effect.**

119 ~~[A claim of an owner which has become due against an occupant and which is secured~~
 120 ~~by the owner's lien may be satisfied as follows:]~~

121 ~~[(1) No enforcement action may be taken by the owner until the occupant has been in~~
 122 ~~default continuously for a period of 30 days:]~~

123 ~~[(2) After the occupant has been in default continuously for a period of 30 days, the~~
 124 ~~owner may begin enforcement action if the occupant has been given notice in writing. The~~
 125 ~~notice shall be delivered in person or sent by certified mail to the last known address of the~~
 126 ~~occupant. If the property to be sold in an enforcement action includes a vehicle, vessel, or~~
 127 ~~outboard motor, as those terms are defined in Section 41-1a-102, or an aircraft as defined in~~
 128 ~~Section 72-10-102, the notice shall also be delivered to the last known address of the registered~~
 129 ~~owner and any lienholder, as disclosed by the records of the Motor Vehicle Division. A copy~~
 130 ~~of the notice shall, at the same time, be sent to the sheriff of the county where the self-service~~
 131 ~~storage facility is located. Any lienholder with an interest in the property to be sold or~~
 132 ~~otherwise disposed of, of whom the owner has knowledge either through the disclosure~~
 133 ~~provision on the rental agreement or through the existence of a validly filed and perfected~~
 134 ~~UCC-1 financing statement with the Division of Corporations and Commercial Code, or~~
 135 ~~through other written notification, shall be included in the notice process as set forth in this~~
 136 ~~section:]~~

137 (1) An owner may enforce a lien described in Section 38-8-2 against an occupant if:

138 (a) the occupant is in default for a continuous 30-day period; and

139 (b) the owner provides written notice of the owner's intent to enforce the lien, in

140 accordance with the requirements of this section, to the occupant and each known lienholder.

141 (2) An owner shall provide the written notice described in Subsection (1)(b):

142 (a) in person;

143 (b) by certified mail, to the person's last known address; or

144 (c) subject to Subsection (3), by email.

145 (3) If an owner sends a notice described in Subsection (2) by email and does not

146 receive a response, return receipt, or delivery confirmation from the email address to which the

147 notice was sent within three business days after the day on which the notice was sent, the

148 owner shall deliver the notice in person or by certified mail to the person's last known address.

149 ~~[(3)]~~ (4) [This] A written notice described in Subsection (1)(b) shall include:

150 (a) an itemized statement of the owner's claim showing the sum due at the time of the
151 notice and the date when the sum became due;

152 (b) a brief ~~[and general]~~ description of the personal property subject to the lien~~[-which~~
153 ~~description shall be reasonably adequate to permit the person notified to identify the property;~~
154 ~~except that any container including, but not limited to, a trunk, valise, or box that is] that~~
155 ~~permits the person to identify the property, unless the property is locked, fastened, sealed, [or]~~
156 ~~tied, or otherwise stored in a manner [which deters immediate access to its contents may be~~
157 ~~described as such without describing its contents] that prevents immediate identification of the~~
158 ~~property;~~

159 (c) ~~if permitted by the terms of the rental agreement, a [notification of denial of] notice~~
160 ~~that the occupant may not access [to] the occupant's personal property[- if such denial is~~
161 ~~permitted under the terms of the rental agreement, which notification shall provide] until the~~
162 ~~occupant complies with the requirements described in Subsection (9);~~

163 (d) the name, street address, and telephone number of the owner ~~[or his designated~~
164 ~~agent whom] or the individual the occupant may contact to respond to the notification;~~

165 ~~[(d)] (e) a demand for payment within a specified time not less than 15 days after~~
166 ~~[delivery of the notice] the day on which the notice is delivered; and~~

167 ~~[(e)] (f) a conspicuous statement that, unless the claim is paid within the time stated in~~
168 ~~the notice, the personal property will be advertised for sale [or other disposition] and will be~~
169 ~~sold [or otherwise disposed of] at a specified time and place.~~

170 ~~[(4)] (5) [Any] A notice [made] under this section shall be presumed delivered when it~~
171 ~~is deposited with the United States Postal Service and properly addressed with postage prepaid.~~

172 ~~[(5)] (6) (a) After the expiration of the time given in the notice, an advertisement of the~~
173 ~~sale [or other disposition] of the personal property subject to the lien shall be [published]:~~

174 (i) ~~[(A) if there is a newspaper of general circulation in the county where the~~
175 ~~self-service storage facility is located,] published once a week for two consecutive weeks in a~~
176 ~~newspaper of general circulation in [that] the county where the self-service storage facility is~~
177 ~~located; or~~

178 ~~[(B) if there is not a newspaper of general circulation in the county where the~~
179 ~~self-service storage facility is located, by posting the advertisement of sale or other disposition~~
180 ~~in not less than six conspicuous places in the neighborhood where the self-service storage~~

181 facility is located; and]

182 (ii) advertised in any other commercially reasonable manner.

183 [~~(ii) in accordance with Section 45-1-101 for two weeks.]~~

184 (b) A manner of advertising described in Subsection (6)(a)(ii) is commercially

185 reasonable if:

186 (i) at least three independent bidders attend the sale at the time and place advertised; or

187 (ii) in the case of a sale that occurs on an online auction website, at least three

188 independent bidders bid on the property during a sale that takes place at the time and website

189 advertised.

190 [~~(b)~~] (c) [The] An advertisement described in Subsection (5)(a) shall include:

191 (i) a brief and general description of the personal property reasonably adequate to
192 permit its identification [~~as provided for in Subsection (3)(b)];~~

193 (ii) the address of the self-service storage facility and the number, if any, of the space
194 where the personal property is located; [and]

195 (iii) the name of the occupant and [his] the occupant's last known address; and

196 [~~(ii)~~] (iv) the time, place, and manner of the sale [or other disposition, which sale or
197 other disposition], which shall take place not sooner than 15 days after the [first publication]
198 day on which the sale is first advertised under Subsection (6)(a).

199 [~~(6)~~] (7) [~~Any~~] A sale [~~or other disposition]~~ of the personal property shall conform to
200 the terms of the notice provided for in this section.

201 [~~(7)~~] (8) [~~Any~~] A sale [~~or other disposition]~~ of the personal property shall be held at the
202 self-service storage facility or at the nearest suitable place to where the personal property is
203 held or stored.

204 [~~(8)~~] (9) Before [~~any~~] a sale [~~or other disposition]~~ of personal property under this
205 section, the occupant may pay the amount necessary to satisfy the lien and the reasonable
206 expenses incurred under this section and thereby redeem the personal property; upon receipt of
207 this payment, the owner shall return the personal property, and thereafter the owner shall have
208 no liability to any person with respect to that personal property.

209 [~~(9)~~] (10) A purchaser in good faith of the personal property sold to satisfy a lien as
210 provided for in this chapter takes the property free of any rights of persons against whom the
211 lien was valid and free of any rights of a secured creditor, despite noncompliance by the owner

212 with the requirements of this section.

213 ~~[(H)]~~ (11) In the event of a sale under this section, the owner may satisfy ~~[his]~~ the lien
214 for the proceeds of the sale, subject to the rights of any prior lienholder; the lien rights of the
215 prior lienholder are automatically transferred to the proceeds of the sale; if the sale is made in
216 good faith and is conducted in a reasonable manner, the owner shall not be subject to any
217 surcharge for a deficiency in the amount of a prior secured lien, but shall hold the balance, if
218 any, for delivery to the occupant, lienholder, or other person in interest; if the occupant,
219 lienholder, or other person in interest does not claim the balance of the proceeds within one
220 year of the date of sale, it shall become the property of the Utah state treasurer as unclaimed
221 property with no further claim against the owner.

222 ~~[(H)]~~ (12) If the requirements of this chapter are not satisfied, if the sale of the
223 personal property is not in conformity with the notice of sale, or if there is a willful violation of
224 this chapter, nothing in this section affects the rights and liabilities of the owner, occupant, or
225 any other person.

226 Section 4. Section **38-8-3.5** is enacted to read:

227 **38-8-3.5. Right to tow certain vehicles subject to lien.**

228 (1) If the property subject to a lien described in Section 38-3-2 is a vehicle, the
229 occupant is in default for a continuous 60-day period, and the owner chose not to sell the
230 vehicle under Section 38-8-3, the owner may have the vehicle towed from the self-storage
231 facility by an independent towing carrier that is certified by the Department of Transportation
232 as described in Section 72-9-602.

233 (2) Within one day after the day on which a vehicle is towed under Subsection (1), the
234 owner shall send written notice by certified mail, postage prepaid, to the occupant's last known
235 address that states:

236 (a) the date the vehicle was towed; and

237 (b) the address and telephone number of the person that towed the vehicle.

238 (3) An owner that has a vehicle towed under Subsection (1) is not liable for any
239 damage that occurs to the vehicle after the independent towing carrier takes possession of the
240 vehicle.

241 Section 5. Section **38-8-4** is amended to read:

242 **38-8-4. Posting of notice.**

243 Each owner acting under this chapter shall keep posted in a prominent place in [~~his~~] the
244 owner's office at all times a notice [~~which~~] that reads as follows:

245 "All articles stored [~~by~~] under a rental agreement, [~~and~~] for which charges have not
246 [~~having~~] been paid for 30 days, will be sold [~~or otherwise disposed of~~] to pay charges. If this
247 business does not sell a vehicle stored under a rental agreement, it will be towed from the
248 self-storage facility after 60 days of nonpayment."